

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the matter of:)	
)	No. 75-036
Opinion requested by)	July 2, 1975
Vincent F. Biondo, Jr.)	
<u>City of Carlsbad</u>)	

BY THE COMMISSION: We have been asked the following question by Vincent F. Biondo, Jr., City Attorney of the City of Carlsbad:

The San Diego Gas and Electric Company is a public utility which serves the City of Carlsbad. One of the Company's principal facilities, the Encino Generating Plant, is located in the City of Carlsbad. That facility and the incidental easements are subject to regulation as part of the city's land use control program.

The Company has approximately fifteen million shares of outstanding common stock. Mayor Robert C. Frazee owns personally 500 shares of San Diego Gas and Electric common stock. In addition, Mayor Frazee holds an interest in a trust established by his late mother containing 10,000 shares of San Diego Gas and Electric Company stock. The Mayor's father has a life interest in the trust, and the Mayor will receive one-fifth of the assets upon his father's death.

A wholly-owned subsidiary of the San Diego Gas and Electric Company as part of a joint venture with other corporations has acquired over 500 acres of property outside the existing city limits but within its jurisdiction. The subsidiary proposes to develop an industrial park on this property, an important element of which would be an oil refinery. The city council will be called upon to certify an environmental impact report for this development and will be asked to pass a general plan amendment adopting a specific plan for the property, as well as the annexation and all necessary zoning and other land use decisions.

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- (1) Does a conflict of interest exist in regard to the Mayor's vote on San Diego Gas and Electric Company matters or the industrial park-refinery development arising from his ownership of the 500 shares of common stock?
- (2) If the answer is yes, may the conflict be eliminated by the sale of the securities he owns personally?
- (3) Is it necessary for the Mayor to include in his financial disclosure statements his interest in the trust?
- (4) If the answer to question #3 is yes, may that disclosure reflect only the fact of the trust itself, or must the individual investments in the trust portfolio, including the San Diego Gas and Electric Company stock, be disclosed?
- (5) Does a conflict of interest exist due to the Mayor's interest in the trust if he votes on any of the matters relating to the proposed industrial park-refinery development or other San Diego Gas and Electric Company matters?
- (6) If a conflict does exist, may the Mayor still chair the meeting during city council consideration of such matters?

CONCLUSION

- (1) If the Mayor votes on San Diego Gas and Electric Company matters, then a conflict of interest would exist due to his ownership of 500 shares of common stock.
- (2) The sale of the securities would remove the potential for a conflict of interest.
- (3) It is necessary for the Mayor to include in his financial disclosure statement his interest in the trust.
- (4) The disclosure must reflect the individual investments of the trust's portfolio.
- (5) If the Mayor votes on matters relating to the proposed

industrial park-refinery development or other San Diego Gas and Electric matters, a conflict of interest will exist.

- (6) The Mayor is prohibited from chairing meetings during City Council consideration of these matters.

ANALYSIS

(1) The Political Reform Act provides that no public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. Government Code Section 87100.1^{1/} If the Mayor has a financial interest in the industrial park proposed within the city's jurisdiction, he is prohibited from participating in a decision having a material financial effect on the interest.

Financial interest is defined as including, among other things:

- (a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000);

Section 87103(a).

Since the 500 shares held by the Mayor have a value greater than \$1,000^{2/} and the decision regarding the industrial park will have a material financial effect on San Diego Gas and Electric, Mayor Frazee is prohibited from making or participating in the making of the decision regarding the industrial park.

(2) Sale of the 500 shares prior to the decision regarding the refinery would eliminate the potential conflict with respect to the ownership of the shares. Such a sale would, of course, have no effect on the possible conflict created by the Mayor's interest in the trust discussed below.

^{1/} All statutory references are to the Government Code unless otherwise noted.

^{2/} On June 6, the stock of San Diego Gas and Electric closed at a price of \$12-1/8 per share on the New York Stock Exchange. The market value of 500 shares was thus \$6,063.

(3) The Mayor must file a disclosure statement listing his investments, interests in real property and income. An "investment" is defined in pertinent part as follows:

Investments of an individual includes a pro rata share of investments of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.

Section 83024.

A one-fifth share in the trust described constitutes an interest greater than ten percent. The question does not include sufficient information to determine the value of the Mayor's interest in the San Diego Gas and Electric stock of the trust since his father's life interest includes a power of invasion by the trustee. The amount remaining to the Mayor is yet to be determined. However, if this pro rata share of the interest exceeds \$1,000, it must be reported.

(4) When an interest must be disclosed, the disclosure statement must include:

- (a) A statement of the nature of the investment or interest;
- (b) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;

Section 87206.

Since under Section 82034 the Mayor's pro rata share of the trust's stock constitutes an investment of the Mayor, the ownership by the trust of San Diego Gas and Electric Company shares must be listed and a general description of the Company's business activities stated.

(5) The Mayor's interest in the trust constitutes "a present or future interest worth more than \$1,000." Section 87103(d). Although he has no present interest in the trust, his future interest is sufficient to prohibit the Mayor's vote on any of the matters relating to the proposed development or other San Diego Gas and Electric Company matters. Section 87103 provides:

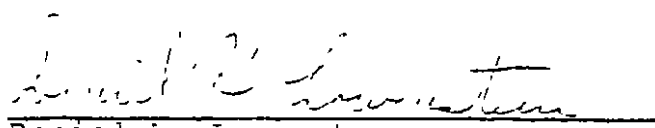
For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, by any business

entity controlled by the public official or by a trust in which he has a substantial interest. A business entity is controlled by a public official if the public official, his agents, spouse and dependent children hold more than fifty percent of the ownership interest in the entity. A public official has a substantial interest in a trust when the official, his spouse and dependent children have a present or future interest worth more than one thousand dollars (\$1,000).

(Emphasis added)

(6) No official may "participate in making. . . a governmental decision. . . in which. . . he has a financial interest." Section 87100. Chairing a meeting during City Council consideration of matters related to San Diego Gas and Electric would constitute participation and would be prohibited.

Approved by the Commission on July 2, 1975. Concurring: Brosnahan, Carpenter, Lowenstein and Miller. Commissioner Waters was absent.


Daniel H. Lowenstein
Commissioner